



## Centers for Medicare & Medicaid Services

[CMS-3434-PN]

### **Medicare and Medicaid Programs: Application from the Accreditation Commission for Health Care (ACHC) for Continued Approval of its End-Stage Renal Disease (ESRD) Accreditation Program**

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice with request for comment.

**SUMMARY:** This notice acknowledges the receipt of an application from the Accreditation Commission for Health Care (ACHC) for continued recognition as a national accrediting organization for end-stage renal disease (ESRD) facilities that wish to participate in the Medicare or Medicaid programs.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** In commenting, please refer to file code CMS-3434-PN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. Electronically. You may submit electronic comments on this regulation to <http://www.regulations.gov> . Follow the “submit a comment” instructions.

2. By regular mail. You may mail written comments to the following address  
ONLY:

Centers for Medicare & Medicaid Services,  
Department of Health and Human Services,  
Attention: CMS-3434-PN,  
P.O. Box 8010,  
Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. By express or overnight mail. You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services,  
Department of Health and Human Services,  
Attention: CMS-3434-PN,  
Mail Stop C4-26-05,  
7500 Security Boulevard,  
Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the “SUPPLEMENTARY INFORMATION” section.

**FOR FURTHER INFORMATION CONTACT:** Joy Webb, (410) 786-1667 or Jennifer Milby, (410) 786-8828.

**SUPPLEMENTARY INFORMATION:**

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on Regulations.gov public comments that make threats to

individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

## **I. Background**

Under the Medicare program, eligible beneficiaries may receive covered services from an end-stage renal disease (ESRD) facility (also known as a “dialysis facility”) provided certain requirements are met. Section 1881(b) of the Social Security Act (the Act), establish distinct criteria for facilities seeking designation as an ESRD facility. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 494 specify the minimum conditions that an ESRD facility must meet to participate in the Medicare program.

Generally, to enter into an agreement, an ESRD facility must first be certified by a state survey agency (SA) as complying with the conditions or requirements set forth in part 494 of our regulations. Thereafter, the ESRD facility is subject to regular surveys by a SA to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services (the Secretary) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body’s approved program would be deemed to meet the Medicare conditions. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance

that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at §§488.4, 488.5 and 488.5(e)(2)(i). The regulations at § 488.5(e)(2)(i) require AOs to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

The Accreditation Commission for Health Care's (ACHC's) current term of approval for their ESRD facility accreditation program expires April 11, 2023.

## **II. Approval of Deeming Organizations**

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this notice is to inform the public of the ACHC's request for continued approval of its ESRD facility accreditation program. This notice also solicits public comment on whether the ACHC requirements meet or exceed the Medicare conditions for coverage (CfCs) for ESRD facilities.

## **III. Evaluation of Deeming Authority Request**

The ACHC submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its ESRD facility accreditation program. This

application was determined to be complete on August 26, 2022. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of the ACHC will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of the ACHC's standards for ESRD facilities as compared with Medicare's ESRD facility CfCs.
- The ACHC's survey process to determine the following:
  - ++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
  - ++ The comparability of the ACHC's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
  - ++ The ACHC's processes and procedures for monitoring an ESRD facility found out of compliance with the ACHC program requirements. These monitoring procedures are used only when the ACHC identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the SA monitors corrections as specified at § 488.9.
  - ++ The ACHC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
  - ++ The ACHC's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.
  - ++ The adequacy of the ACHC's staff and other resources, and its financial viability.
  - ++ The ACHC's capacity to adequately fund required surveys.
  - ++ The ACHC's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.
  - ++ The ACHC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in

accreditation decisions.

++ The ACHC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

#### **IV. Collection of Information Requirements**

This document does not impose information collection requirements, that is, reporting, recordkeeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 et seq.).

#### **V. Response to Public Comments**

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: September 28, 2022.

**Lynette Wilson,**

*Federal Register Liaison,*

*Centers for Medicare & Medicaid Services.*

[FR Doc. 2022-21417 Filed: 10/3/2022 8:45 am; Publication Date: 10/4/2022]